

AMENDED IN ASSEMBLY APRIL 27, 2009

AMENDED IN ASSEMBLY APRIL 20, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1430

Introduced by Assembly Member Swanson

February 27, 2009

An act to add Sections 49423.4 and 49426.3 to the Education Code, relating to pupil health.

LEGISLATIVE COUNSEL'S DIGEST

AB 1430, as amended, Swanson. Pupil health: licensed nurses.

Existing law establishes the public elementary and secondary school system in this state. Under this system, school districts throughout the state provide instruction to pupils in kindergarten and grades 1 to 12, inclusive, at the public elementary and secondary schools.

Existing law provides that any pupil who is required to take, during the regular schoolday, medication prescribed for him or her by a physician and surgeon may be assisted by the school nurse or other designated school personnel, or may carry and self-administer prescription auto-injectable epinephrine if the school district receives the appropriate written statements, as prescribed, from the physician and the parent, foster parent, or guardian of the pupil. Existing regulations of the State Department of Education specify procedures to be followed in the administration of medication to a pupil.

The existing Nursing Practice Act regulates the practice of nursing, which is defined in the act as those functions, including basic health care, that help people cope with difficulties in daily living that are associated with their actual or potential health or illness problems or

the treatment thereof, and that require a substantial amount of scientific knowledge or technical skill.

This bill would express findings and declarations of the Legislature with respect to a Superior Court ruling relating to the administration of medication to pupils in California public elementary and secondary schools. ~~This bill, notwithstanding the provision referenced above that authorizes assistance to be given to a pupil by school personnel during the schoolday under certain conditions,~~ The bill would require, *with certain exceptions*, that any medication that is administered to a pupil who is required to take, during the regular schoolday, medication prescribed for him or her by a physician or surgeon shall be administered by a health care professional operating within the scope of his or her practice.

The bill would specify that, for the purposes of these provisions, the practice of nursing is defined as specified in the Nursing Practice Act.

The bill would also codify the regulations of the State Department of Education with respect to the administration of medication to a pupil that are ~~referred~~ *referenced* above, *with certain exceptions*.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The Nursing Practice Act (Chapter 6 (commencing with
- 4 Section 2700) of Division 2 of the Business and Professions Code)
- 5 was designed to protect patients in the administration of
- 6 medications.
- 7 (b) According to the ruling of the Superior Court of California
- 8 in and for the County of Sacramento filed on December 26, 2008,
- 9 in the case of American Nurses Association et al. v. O'Connell et
- 10 al., the administration of medication to pupils in California public
- 11 elementary and secondary schools must be accomplished in
- 12 accordance with the requirements of the Nursing Practice Act.
- 13 (c) The court specifically found that state laws authorize the
- 14 administration of medication to a ~~student~~ *pupil* only by a licensed
- 15 health care professional acting within the scope of practice for
- 16 which he or she is licensed to perform services.

(d) The court noted the statutorily authorized exceptions that authorize an unlicensed person to administer medication, but specifically noted that assistance within the meaning of Section 49423 of the Education Code does not encompass the administration of medications. The court ruled that the plain meaning of assistance and administration, as well as the legislative history of the section, indicate that assistance is distinct from, rather than synonymous or interchangeable with, administration.

SEC. 2. Section 49423.4 is added to the Education Code, to read:

~~49423.4. (a) Notwithstanding Sections 49423, 49423.1, and 49423.5, any medication that is~~

49423.4. (a) Except as provided in Sections 49423, 49423.1, 49423.5, and 49426.3, any medication that is administered to a pupil who is required to take, during the regular schoolday, medication prescribed for him or her by a physician or surgeon shall be administered by a licensed health care professional operating within the scope of his or her practice.

(b) Nothing in this section prohibits an individual from rendering emergency medical aid in—~~either~~ *any* of the following circumstances:

(1) The medical aid is authorized by Section 49414 or 49414.5.

(2) When it appears to the individual that the child is in clear and present danger.

(3) *In the event of an emergency, as defined in subdivision (d) of Section 2727 of the Business and Professions Code.*

(c) *Nothing in this section prevents unlicensed personnel from assisting pupils with medication as provided by law.*

SEC. 3. Section 49426.3 is added to the Education Code, to read:

49426.3. (a) For the purposes of this article, the practice of nursing is defined as specified in subdivision (b) of Section 2725 of the Business and Professions Code.

(b) A school nurse may administer medication to a pupil or otherwise assist a pupil in the administration of medication as allowed by law and in keeping with applicable standards of professional practice.

(c) Other designated school personnel may administer medication to pupils or otherwise assist pupils in the administration of medication as allowed by law and, if they are licensed health

1 care professionals, in keeping with applicable standards of
2 professional practice for their license.

3 (d) The pupil's parent or legal guardian may administer
4 medication to the pupil or otherwise assist the pupil in the
5 administration of medication as allowed by law.

6 (e) An individual designated to do so by the parent or legal
7 guardian may administer medication to the pupil or otherwise assist
8 the pupil in administration of medication as allowed by law. ~~A~~
9 ~~local education agency may establish rules governing the~~
10 ~~designation of an individual by a parent or legal guardian in order~~
11 ~~to ensure all of the following:~~

12 ~~(1) The individual is clearly identified.~~

13 ~~(2) The individual is willing to accept the designation.~~

14 ~~(3) The individual being designated is permitted to be present~~
15 ~~on the schoolsite.~~

16 ~~(4) Any limitations on the individual's authority in his or her~~
17 ~~capacity as designee are clearly established.~~

18 ~~(5) The individual's service as a designee would not be~~
19 ~~inconsistent or in conflict with his or her employment~~
20 ~~responsibilities, if the individual being designated is employed by~~
21 ~~the local education agency. The individual designated shall not be~~
22 ~~an employee of the local educational agency.~~